

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MAX BIRMINGHAM,

Plaintiff,

Case No: 1:20-cv-497

v.

Oral argument requested

DANA NESSEL,

Defendant.

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(c), *Pro Se* Plaintiff Max Birmingham respectfully requests leave of Court to file a Second Amendment Complaint, a copy of which is submitted hereto. The grounds for this motion are:

1. Plaintiff filed his original Complaint on April 17, 2020. ECF No. 1. The Complaint Sought declaratory relief, preliminary and permanent injunctive relief.
2. A First Amended Complaint was filed on May 13, 2020. ECF No. 11. The First Amended Complaint added four additional claims for relief. ECF. No. 11 at 14 – 16.
3. There are facts which Plaintiff would like to include which relate to this suit. Plaintiff would like to add facts that Defendant is handling investigations in which the elements of the of MICH. COMP. LAWS 750.532 (“Seduction statute”) are met.
4. Plaintiff would like to include facts and case law that show that there is a credible threat of prosecution.
5. Plaintiff would also like to include facts about ongoing and irreparable harm. Specifically, how those who have agreed to a plea bargain under the Seduction statute have been accused of being rapists, and the deleterious effects of being accused of being a rapist.
6. Plaintiff would also like to include that claims for declaratory and injunctive relief are

authorized by 42 U.S.C. § 1983; 42 U.S.C. § 1988, and update each of the causes of action accordingly.

7. Plaintiff would like to include facts and case law regarding the violation of the Equal Protection Clause cause of action.

8. Plaintiff would also like to include statements from a practicing attorney and a law professor who stated that the Seduction statute is unconstitutional.

9. In addition, the Second Amended Complaint contains some stylistic changes.

10. Plaintiff wants to ensure that this challenge to the constitutionality of the Seduction statute is tried on the merits. Specifically, Plaintiff wants to ensure that the Court will rule whether the Seduction statute is or is not unconstitutional.

11. Plaintiff now seeks to leave of Court to file a Second Amended Complaint. After a responsive pleading has been filed to a complaint, Federal Rule of Civil Procedure 15(a) provides that a party may file an amended complaint “only by leave of court or by written consent of the adverse party.” FED. R. CIV. P. 15(a). Rule 15(a) provides that such “leave shall be freely given when justice so requires.” *Id.* Rule 15 “reinforce[s] the principle that cases ‘should be tried on their merits rather than the technicalities of pleadings,’ *Moore v. City of Paducah*, 790 F.2d 557, 559 (6th Cir. 1986) (quoting *Tefft v. Seward*, 689 F.2d 637, 639 (6th Cir. 1982)), and therefore assumes “a liberal policy of permitting amendments.” *Ellison v. Ford Motor Co.*, 847 F.2d 297, 300 (6th Cir. 1988).

12. The Second Amended Complaint would also not be futile. “Leave to amend . . . should only be denied on the ground of futility when the proposed amendment is clearly insufficient or frivolous on its face.” *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986); *see also Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000).

For all these reasons, Plaintiff respectfully requests that the Court grant leave to file the Second Amended Complaint.

Respectfully submitted,

/s/ Max Birmingham
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PRO SE

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Dated: June 12, 2020

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed on June 12, 2020, via the CM / ECF system, and that the foregoing has been served via email on Defendant.

Respectfully submitted,

/s/ Max Birmingham
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Dated: June 12, 2020